

U.S. Patent Application Serial No. 09/752,939  
Applicant: Gibbins, Bruce L., *et al.*

### REMARKS

After Amendment, Claims 1-4, 6-10, 12 and 21-36 are pending in the application. In this Response, Claim 1 was amended to clarify the oxygen delivery system of the currently claimed invention, and amendments were made to other claims correct claim dependency or other minor amendments. New Claims 34-36 have been added. No new matter is believed to have been added.

Applicants wish to point out that this application was lost at the U.S. Patent Office for a significant amount of time and through telephone conversations during the time of reconstruction of the file, Applicants have repeatedly requested a recalculation of the time lost. Applicants herein reiterate that request for the recalculation of the time lost due to loss of the actual file by the Patent Office.

#### **Rejection of Claims 1-12 and 21-33 under 35 U.S.C. §112, second paragraph**

The Examiner rejected Claims 1-12 and 21-33 under 35 U.S.C. § 112, second paragraph, as being indefinite because of the recitation of "oxygen rich". Claim 1 has been amended and no longer recites "oxygen rich". Support for this amendment can be found throughout the application and particularly at page 21, lines 10-15, or paragraph [0073] of the published application. Applicants request the Examiner to withdraw this rejection.

#### **Rejection of Claims 1-12 and 21-33 under 35 U.S.C. § 103(a)**

The Examiner rejected Claims 1-12 and 21-33 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,187,290 to Gilchrist, *et al.* (Gilchrist), in view of U.S. Patent No. 5,792,090 to Ladin (Ladin). The Examiner stated "that it would have been obvious to one having ordinary skill in the art at the time of the invention to provide closed cell foam comprising polymer network and polysaccharide with gas entrapped in the foam as disclosed by US '290 and replace the gas by oxygen as disclosed by US '090...." Applicants respectfully traverse this rejection.

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There is no teaching or suggestion in Gilchrist of providing a foamed article that is capable of transferring any type of gas to a physiological site, such as a wound. Gilchrist teaches providing active agents to wounds, but none of the active agents are gases. See Gilchrist, Col 4, line 36-Col. 5, line 8, where an exhaustive list of pharmaceutically active agents are taught, including antiseptics, antibiotics, antibacterials, antifungal agents, metals, nutritional agents, growth factors, living cells, enzymes, charcoal, astringents, and desloughing and debriding agents. There is no mention, hint or word that discusses providing a gas to a wound site.

Gilchrist teaches that "the advantages of applying a topical product in the form of a foam" includes easy application, conformation to surfaces, insulation, cooling effects, antibacterial effects, biocompatibility with tissues, as a vehicle for pharmaceutical agents, and maintenance of a moist environment. See Gilchrist, Col. 3, lines 25-36. There is no teaching or suggestion that the bubbles in a foam have any use or purpose other than forming a gel into the more spreadable form of a foam, or that the foam vehicle can provide gases to a site.

There is no teaching or suggestion in Gilchrist that gas remains entrapped within the recently created foam or the dried, collapsed cell, foam sheet, or that a foam can be used to deliver a gas. All of the examples of Gilchrist demonstrated that a foam was produced and formed into a foam pad or sheet. Nothing is taught by the examples, or the rest of the disclosure of Gilchrist except that foam formation can occur. There is no enabling teaching or suggestion in Gilchrist that the foam or the resulting foam sheet can be used as a delivery device for any gas to a wound.

There is no motivation found in Gilchrist to deliver oxygen, or any gas, to a wound and Ladin's suggestion of the benefits of oxygen is not applicable to a device that does not deliver gases. Applicants respectfully submit that any teachings of the benefit of providing oxygen for healing, if suggested by Ladin, cannot be combined with the foamed product of Gilchrist. Gilchrist does not contemplate any delivery of any gas to a wound. In Gilchrist, there is no teaching or suggestion of providing gases to wounds, and combination of such a lack of teaching with the benefits of any gas, regardless of whether that teaching is of the benefits of oxygen, does not lead one of ordinary skill in the art to make Applicant's currently claimed invention. Applicants respectfully submit that the disclosed foam of Gilchrist cannot be combined with the

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teachings of Ladin to render Applicants' currently claimed invention obvious, and request withdrawal of the rejection.

#### Fees and Petition for Extension of Time

Applicants have previously paid for 25 total claims and by this Response, have 26 claims pending. Authorization to charge the Deposit Account No. 20-1507 for one dependent claim, \$9.00, is given.

Applicants have enclosed a Petition for a one month extension of time and authorization to charge the Deposit Account No. 20-1507 in the amount of \$55.00 to cover the fee for a one month extension of time.

It is believed that no other fees are due. If, however, it is determined that fees are due, authorization is given to charge Deposit Account No. 20-1507.

#### REQUEST FOR REFUND OF ISSUE FEE AND PUBLICATION FEE

Applicants received the Notice of Withdrawal from Issue under 37 C.F.R. §1.313(b), mailed April 22, 2004. Applicants had timely paid the issue fee and publication fee on April 9, 2003, and then the file was lost by the U.S. Patent and Trademark Office, and no patent issued. Applicants request a refund in the amount of \$980 to be deposited to Deposit Account No. 20-1507.

#### CONCLUSION

The foregoing is a complete response to the Office Action mailed May 17, 2004. Applicants respectfully submit that Claims 1-4, 6-10, 12 and 21-36 are patentable. Early and favorable consideration is solicited.

No fees other than the fee for one additional dependent claim are believed due; however, the Commissioner is hereby authorized to charge any other fees that may be required, or credit any overpayment, to Deposit Account No. 20-1507.

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If the Examiner believes there are other issues that can be resolved by a telephone interview, or there are any informalities that remain in the application which may be corrected by the Examiner's amendment, a telephone call to the undersigned attorney at (404) 885-3652 is respectfully requested.

Respectfully submitted,



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